

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By **CHAIRMAN ROSALIE (ROSIE) BUZZAS**, on January 31, 2005 at 3:30 P.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Rep. Rosalie (Rosie) Buzzas, Chairman (D)
Rep. Carol C. Juneau, Vice Chairman (D)
Rep. John E. Witt, Vice Chairman (R)
Rep. Tim Callahan (D)
Rep. Eve Franklin (D)
Rep. Bill E. Glaser (R)
Rep. Ray Hawk (R)
Rep. Cynthia Hiner (D)
Rep. Joey Jayne (D)
Rep. Christine Kaufmann (D)
Rep. Ralph L. Lenhart (D)
Rep. Walter McNutt (R)
Rep. Penny Morgan (R)
Rep. John L. Musgrove (D)
Rep. Rick Ripley (R)
Rep. Jon C. Sesso (D)
Rep. John Sinrud (R)
Rep. Janna Taylor (R)

Members Excused: Rep. Jack Wells (R)

Members Absent: Rep. Verdell Jackson (R)

Staff Present: Marcy McLean, Committee Secretary
Jon Moe, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 89, 1/27/2005; HB 169,
1/27/2005; HB 447, 1/27/2005
Executive Action: None

HEARING ON HB 89**Opening Statement by Sponsor:**

REP. JOHN WITT, HD 28, CARTER, opened the hearing on **HB 89**, a bill to revise requirements for automated reporting system for gambling machines. This bill has passed the House, but was referred to Appropriations because of the \$1.5 million appropriation request (which is in the Governor's budget). The purpose of the bill is to allow the Gambling Control Division to use the Internet to improve the collection of taxes and services to the businesses they regulate. For the past decade, the State struggled with a dial-up reporting system for video gambling machines. This bill would repeal legislation that is no longer relevant without a dial-up system. Most of the cost of this bill is for a database that collects over \$50 million/year in taxes for the General Fund. Considering that in the past 8-10 years we have brought in over \$800 million in gaming funds, and \$1.5 million is a small price to pay to provide better service to the gaming industry.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 3; Comments: Rep. Jackson entered hearing.}

Proponents' Testimony:

Gene Huntington, Gambling Control Division, Department of Justice, explained that the dial-up project was proposed in 1994, approved by the Legislature in 1999 and funded over a period of six years. The contractor never delivered on this project, and in 2003 it was determined that it would never be completed. The State sued the contractor, they went bankrupt, and there is a claim in the Bankruptcy Court to get back the General Fund money that was invested with the contractor. A consultant reviewed the changes in the gaming industry over the past 10 years and the cost of dial-up systems. Their recommendation is that the Gambling Control Division get a modern database that will meet the State's standard and be able to do financial services over the Internet. They also said the focus should be primarily with the route operators; those businesses that rent gambling machines to taverns and casinos. They account for about 75% of the gambling machines in Montana. The largest ten route operators provide the State with over 50% of the gambling revenue, and they have advanced accounting systems. This bill would allow the State to get access to the information these businesses are already keeping instead of pursuing a central monitoring system (i.e., dial-up) because of the cost. HB 89 will repeal loans and tax-credits that would have been available to operators for a dial-up system, but continues the multi-game incentive whereby signed agreements require businesses to report their taxes

electronically when a system becomes available. Businesses would have three ways to pay their video gaming taxes (18,000 returns quarterly): 1) batch method filed electronically, 2) via the website, or 3) continue to use pencil and paper. Of the \$1.5 million requested in the Governor's budget, \$1.1 million is from the general fund and \$400,000 is from gambling, special revenue, and liquor.

EXHIBIT(aph24a01)

{Tape: 1; Side: A; Approx. Time Counter: 3 - 10.5}

Rhonda Carpenter-Wiggers, Montana Coin Machine Operators, said that she represents the route operators referred to by Gene Huntington. Initially, the bar owners would not agree to a dial-up system, because it was very expensive, and they were scared of its intrusiveness. A few years later they agreed that it was information they wanted to have. During that time, the Gambling Control fee account increased in value; it was transferred to the General Fund with the agreement that if the Department ever needed it, money would be appropriated back. The State was unable to find a contractor who could build the type of dial-up system we needed for the price we could afford. Technology has improved and there is a better system available that uses the Internet to report. This bill allows the State to develop a computer system that the route operators can send their information to, cutting back on a tremendous amount of paper reporting.

Rich Miller, Gaming Industry Association, said there are no tax credits left in this bill. The industry has developed electronic systems for their own accounting, because of efficiencies, and are ready to start electronic reporting to the State. Most of the money requested in this bill, the \$1.1 million, has either been appropriated in the past or has been paid in fees over the past 15 years.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. MORGAN asked if the implementation of this new system would increase revenue. **Gene Huntington** speculated that there should be some small improvements to the business process due to efficiency, but they anticipate the refunds will equal the under payments.

Closing by Sponsor:

REP. WITT said that route operators, bar owners, the industry, and the State will be better off with passage of this bill.

HEARING ON HB 169**Opening Statement by Sponsor:**

REP. DAVE MCALPIN, HD 94, opened the hearing on **HB 169**, which tightens up enforcement of the tobacco master settlement agreement to ensure that we continue to receive the \$25 million annually from the settling tobacco companies. The House passed this bill 84-16 on January 24, 2005. The bill provides for: 1) clarification of 'roll-your-own' (RYO) tobacco; 2) allows for better cost recovery provisions when enforcing the master settlement agreement; and 3) minor tightening of requirements to wholesalers, particularly the non-participating manufacturers (NPM) .

Proponents' Testimony:

Chris Tweeten, Office of Attorney General, explained that in 1998 the four major tobacco manufacturers in the United States settled with the Attorney Generals in 46 states in what became known as the tobacco master settlement agreement (MSA). Under the MSA, they agreed to major changes in the way they market their products in order to avoid marketing to children, and also agreed to make substantial payments to compensate the states for damages incurred from fraudulent advertising practices. These MSA payments are separate from the State of Montana's tobacco taxes. Small companies, who at the time of the settlement controlled less than 2% of the market (now 4-5%), are referred to as non-participating manufacturers (NPMs) and did not join in the MSA.

The MSA requires NPMs to make payments into an escrow account in an amount approximate to what they would have paid under the MSA. These escrow funds belong to these companies, they are not revenues to any state, and on a 25-year 'first-in, first-out' basis they rotate back to the NPMs. The funds are there in case the states find it necessary to bring litigation against the NPMs to recover the same kinds of damages they recovered from the original participating manufacturers in 1998. It is important that the State diligently enforce this escrow statement. Under the MSA, in the event of substantial loss of market share from the participating manufacturers to the NPMs, the settling tobacco manufacturers can reduce or terminate payments under the MSA. The termination does not apply to the State of Montana that has a model act in effect, and diligently enforces that act by making the NPMs pay into the escrow account. Two years ago, HB 663 was passed to help the Department of Justice enforce compliance by requiring all manufacturers to certify to the Attorney General (AG) that they are in compliance with Montana's NPM law. It then directed the AG to publish a list of the compliant manufacturers

and prohibit wholesalers and retailers from selling any cigarettes not on this list. The purpose of HB 169 is to fine tune the Model Act and HB 663. HB 663 provided for the recovery of litigation and investigative costs incurred by the AG, with the intention that the recovered funds be statutorily appropriated to the AG to offset the costs of pursuing these cases. Due to a drafting error, the statutory appropriation did not capture all of the funds recovered under HB 663. HB 169 seeks to address these enforcement problems and make it easier for the State to show that it is diligently enforcing the escrow statute. It amends the definition of 'cigarette' in Montana Code Annotated to delete the reference to tax stamps so that RYO tobacco, which is taxed by weight, will be covered.

EXHIBIT (aph24a02)

EXHIBIT (aph24a03)

{Tape: 1; Side: A; Approx. Time Counter: 10.5 - 31.7; Comments: Rep. Wells entered hearing.}

Jim Ahrens, Alliance for a Healthy Montana, said they have an interest in this bill because of the trust fund set up under Constitutional Initiative 145 and they urge the Committee's support.

Opponents' Testimony: None

{Tape: 1; Side: A; Approx. Time Counter: 31.7 - 32.6; Comments: End of tape}

Closing by Sponsor:

REP. MCALPIN closed by saying the AG's office should be given every tool to enforce the MSA.

HEARING ON HB 447

Opening Statement by Sponsor:

REP. DAVE GALLIK, HD 79, HELENA, opened the hearing on **HB 447**, to increase State employee pay. He explained that his original bill request was for a 6% pay raise for each year of this biennium, but soon learned that the pay plan was being negotiated in good faith by the elected negotiating team and the Governor. These negotiations started in April 2004 and they finished January 7, 2005 and 65 unions were represented. There have been negotiated agreements for the State employees pay plan since 1975. The only three times the negotiated agreement was not accepted were 1991, when there was a strike, and 1993 and 2003, when the State had no money for pay raises. The current negotiated agreement was

started by the Martz Administration and finished by the Schweitzer Administration, and has been ratified by the members.

EXHIBIT (aph24a04)

Rep. Gallik handed out copies of the collective bargaining statutes that, since 1975, are required to be followed for the purpose of negotiating the State pay plans. Statute 39-31-100 states: "Collective bargaining is a process whereby employees, as a group, and their employers make offers and counter-offers in good faith on conditions of their employment for the purpose of reaching a mutually-accepted agreement." Statute 39-31-305 (3) states: "The requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the Legislature in the executive budget or by bill."

Rep. Gallik asked the Committee to accept the negotiated and ratified agreement, which was reached pursuant to the law and was done in good faith. He also pointed out that the State does not have a lot of extra money to start throwing around. The other bills that address the pay plan were not presented during negotiations; they only appeared on January 11, 2005, after the employees and the State reached a final agreement on January 7th. He said that the law states that State employees will bargain with the Governor, not with the Legislature. If it is decided that the Legislature can overturn the negotiated agreement, then the collective bargaining laws should be changed. He stated that he hopes this will not become a partisan issue and we will trust the people who have been empowered to do their jobs.

Proponents' Testimony:

Linda McCullough, Superintendent of Public Instruction, said HB 447 honors the agreement between the unions representing State employees and Governor Schweitzer. She said: "The State's most precious resource is its employees, who make sure Montanans are served by their State government. This is the time to show respect for their dedication to the State by passing HB 447. Two years ago, when employees received a pay freeze, would have been a good time to intervene on their behalf. Now is not the time to interfere in their negotiated agreement."

David Ewer, Governor's Budget Director, said HB 447 is Governor Schweitzer's negotiated pay plan and asked the Committee to support it.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 15.7}

Randy Morris, State Personnel Division, Department of Administration, stated: "For all the same reasons the department spoke in favor of the Franklin amendments to HB 13, I again rise

in support of HB 447." HB 447 covers the agreed upon negotiations with the labor representatives of a majority of the employees covered by collective bargaining agreements.

[EXHIBIT \(aph24a05\)](#)

Eric Feaver, Montana Education Association-Montana Federation of Teachers (MEA-MFT), said his union represents about 2,000 State employees and 700 university faculty who are directly affected by HB 447. The testimony he gave on January 24 in regard to HB 13 and the Franklin amendments relates to their support of HB 447.

Tom Schneider, Montana Public Employees Association, said that his union has 5,000 members who are covered by HB 447. They support this bill, which covers the agreement done in good faith and ratified in good faith (88%). Mr. Schneider said he has been a member of the Board of Personnel Appeals for the past 12 years. This Board oversees all collective bargaining for public employees in Montana. It would be an unfair labor practice for the union leaders or the Governor to do anything other than the negotiated agreement. He also stated that he has been asked to speak in favor of HB 447 on behalf of the Helena Chamber of Commerce.

George Dennison, President, University of Montana, said that the university system and the Commissioner of Higher Education support HB 447.

Opponents' Testimony:

Denley Loge, Associated Council of Federal and State Municipal Employees (ACFSME) Local 156 Vice President, said it is hard for a State employee to oppose any pay plan, and they appreciate something being done. On the negotiation team, he represents 500 employees, and they are in favor of a straight dollar amount raise for everyone. He met with Governor Schweitzer on November 19, 2004 and explained this. He said they were never invited to any negotiations, and did not know if that is because they are a small union. On January 6, 2005 they negotiated with the Department of Transportation (DOT) and were offered substantially less than the pay plan in HB 447. The next day, DOT met with other unions, and the plan came out in the newspaper that it was accepted by ACFSME, however his union was not included in that. The newspaper article probably referred to the school in Boulder negotiations, but it misrepresented to the ACFSME members across the State. His members feel they have been left out of the discussion and their views have not been made known. It appears that there is a struggle between Democrats and Republicans, and the workers of the State could suffer. During the last session

the budget was balanced over the employees and they were the ones who suffered.

DOT has a broadband pay system for management that is based upon market value. As an example, DOT recently re-negotiated and the maintenance chiefs received a \$7/hour pay increase to bring them up to market value. Therefore, the ACFSME members feel everyone should get the same amount of raise. This would help the most employees who are at the lower pay level, yet have the same expenses for gas and food. All employees are doing a dedicated job for the State of Montana, but most of his co-workers have two jobs in order to make ends meet.

Questions from Committee Members and Responses:

REP. MUSGROVE asked if ACFSME was at the bargaining table and if they had ratified this agreement. **Denley Loge** answered that the Highway Policy Committee, representing the 500 employees, was not at any of the negotiating meetings. It was the ACFSME group that represents the Boulder School employees.

REP. FRANKLIN asked Paula Stoll from the State's negotiating team to step forward as an informational witness. **Paula Stoll**, who represented Governor Schweitzer's office in the negotiations, said ACSME was one of three unions they reached tentative agreement with on January 7th for the Statewide pay plan. Their employees are at the Developmental Center in Boulder and the Chemical Dependency Center in Butte; they represent 50% of the ACSME members. A different plan was negotiated for the transportation unit; the blue collar plan. They are still in collective bargaining and it is represented through the appropriation.

{Tape: 1; Side: B; Approx. Time Counter: 15.7 - 30.7}

REP. SINRUD asked if ACSME transportation union was not present at the Statewide negotiations, how will they be affected by it. **Paula Stoll** answered that the Statewide agreement sets the appropriation for all employees within the executive, judiciary, and legislative branches. The negotiated settlement directly affects those people on the Statewide schedule and the broadband pay schedules. The appropriation is then set for other employees and negotiated within those parameters if there isn't a settlement. The State negotiates with the unions that represent the most State employees; ACFSME, MEA-MFT, and MPEA were at the bargaining table, and represent 89% of the organized employees.

{Tape: 1; Side: B; Approx. Time Counter: 30.7 - 32.6; Comments: End of tape}

REP. SINRUD pointed out that the entry-level salaries for Grades 1 and 2 are in violation of federal minimum wage laws. **Paula Stoll** responded that the lowest-grade position in State government is Grade 5; the grade system was enacted in 1975, which is why some of the salary levels are below minimum wage, however the State never pays below minimum wage.

REP. MORGAN asked **Denley Loge** how many of their 500 union members earn less than \$49,000 and he answered 99%. She then asked him if 99% of his union members would appreciate a larger raise than given by HB 447. **Denley Loge** responded that the average raise in HB 447 is \$.55 and the members would like to see a larger raise than that.

REP. RIPLEY said he wanted to see Statute 39-31-100 and **Rep. Gallick** said he would get a copy for him. **Rep. Gallick** said in quoting that statute, that he was referring to a October 2004 report from the Compensation Advisory Committee, Page 30, that says: "collective bargaining is a process whereby employees as a group and their employers make offers and counter offers in good faith on the conditions of their employment for the purpose of reaching a mutually-accepted agreement."

REP. WITT asked if the negotiating team is elected, and how many of these people earn less than \$50,000. **Randy Morris** said that the State negotiators are set by statute, which says the Governor, or his designee, will negotiate the agreements. The rest of the team is comprised of a representative from the Labor Relations Bureau, a management representative and others who may have knowledge of the process. For Labor's team, the pre-session negotiations are conducted by the Chief of the Labor Relations Bureau who meets with 40-50 representatives of the larger unions. They have been negotiating since April 2004. He said he did not know how many of these people were earning less than \$50,000 since they are not all State employees. He said that many represent unions and he does not have access to their pay information

{Tape: 1; Side: B; Approx. Time Counter: 0 - 11.7}

REP. RIPLEY asked if it is customary to offer different salary schedules to different unions; i.e., ACFSME Transportation being offered less than what has been ratified; and why ACFSME Transportation was not offered the same deal. **Randy Morris** said that HB 13 and HB 447 both propose to eliminate the teacher's and the blue-collar pay plans from statute. They would then be negotiated on a contract-by-contract basis, but they would still have to be done within the appropriated dollars. There are a number of issues and constraints within the blue-collar pay plan

that the percent increase does not totally address, including apprenticeship scales.

REP. TAYLOR asked what the role of Legislature is in this negotiated pay plan, specifically since Statute 39-31-102 does not limit the authority of the Legislature. **Randy Morris** answered that the unions ratify the agreement, the Governor brings it to the Legislature, and this is contingent upon the appropriation from the Legislature. But he does not view that as meaning that the Legislature has responsibility to negotiate the terms and conditions of the agreement. **REP. TAYLOR** quoted Statute 39-31-102 as not limiting the authority of the Legislature relative to appropriations in regard to hours, fringe benefits, conditions of employment, etc. and said that sounded like the Legislature could negotiate, even the number of hours a day an employee can work. **Randy Morris** answered that he thinks that is what happened during the last session when the Legislature negotiated the contract.

REP. WELLS said that of the 89% of the union members represented in negotiations, 11% were not represented. "Is that the ACFSME Transportation members?", he asked. **Paula Stoll** answered that the three unions that entered into the agreement on January 7 represent 85% of the organized State employees. They are still negotiating with the remaining 15%, or 1,035 employees, which includes the 600-800 members of ACFSME Transportation and the Craft Union.

REP. FRANKLIN asked if it is a fair assessment that ACFSME Transportation is still negotiating. **Paula Stoll** said the paid bargaining agent for ACFSME Transportation is Don Kinman, Executive of ACFSME, and she is required to negotiate with him or one of his employees.

REP. SINRUD asked how the broadband pay plan works outside the negotiated agreement. **Paula Stoll** said the agencies with broadband pay will receive the same appropriation and must work within that \$70 million appropriation; however, some agencies have other sources of funding. **REP. SINRUD** asked about money left in an agency's budget being used for broadband pay increases, plus getting the negotiated agreement pay raise, using as an example the Bank Examiners.

{Tape: 1; Side: B; Approx. Time Counter: 11.7 - 27.7}

Randy Morris said departments do not have money available through both the broadband pay plan and money appropriated by HB 447. The 11 different pay plans in the State have monies from the personal services budget and from the appropriation, and is the

money the departments have to allocate. The broadband pay plan gives the agency the flexibility to distribute the 3.5% pool of money within the guidelines of the State Personnel Division and in conformance with their collective bargaining agreement.

{Tape: 1; Side: B; Approx. Time Counter: 27.7 - 32.6; Comments: End of Side A}

In regard to Bank Examiners, he said there was a request for an appropriation to raise their salaries up to a competitive market rate, and that money is separate from HB 447. Since that department has only so much spending authority, they needed the appropriation to allow them to go over it. Then, through HB 447, in October 2005 they would be eligible for the pay increase. Therefore, these specific employees would receive both a grade level adjustment and the negotiated pay increase.

Closing by Sponsor:

REP. GALLICK clarified that the ACFSME Transportation pay plan is still in negotiations, and in the past it has always been negotiated as a flat-dollar amount. The Legislature has the ability to do this appropriation, but he would caution them to not try to become labor negotiators, and instead leave that to the experienced negotiators. If there are philosophical differences within the Legislature, then they should recognize the laws that provide for these negotiations and who should be doing them. Their job is to determine if the State has the funds available to meet the negotiated raise.

REP. SINRUD passed out copies of e-mails he has received in regard to HB 447.

EXHIBIT (aph24a06)

Motion/Vote: **REP. WITT** moved to adjourn. Motion carried unanimously by voice vote.

ADJOURNMENT

Adjournment: 5:20 P.M.

REP. ROSALIE (ROSIE) BUZZAS, Chairman

MARCY MCLEAN, Secretary

RB/mm

Additional Exhibits:

EXHIBIT ([aph24aad0.PDF](#))